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Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Memorandum by the Secretary-General

Introduction

1. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 ("International Tribunal") and adopt the Statute of the International Tribunal annexed to the Secretary-General's report prepared pursuant to Security Council resolution 808 (1993) of 22 February 1993.

2. By its resolution 1329 (2000) of 30 November 2000, the Security Council decided to establish a pool of ad litem judges in the International Tribunal. To that end, it decided to amend articles 12, 13 and 14 of the Statute of the International Tribunal and to replace those articles with the provisions set out in annex I to that resolution. The Security Council also requested the Secretary-General to make practical arrangements for the election as soon as possible of 27 ad litem judges in accordance with article 13 ter of the Statute of the International Tribunal, as so amended.

3. Pursuant to what is now article 13 ter, paragraph 1 (a), of the Statute of the International Tribunal, following the amendments that were introduced by the Security Council in resolution 1329 (2000), the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 15 February 2001, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for ad litem judges of the International Tribunal. In accordance with article 13 ter, paragraph 1 (b), of the Statute, as so amended, each State was invited to nominate, within 60 days of the date of the invitation, up to four candidates. The Legal

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Counsel informed States that, should they decide to nominate two or more candidates, then they were at liberty, should they wish to do so, to nominate candidates who were of the same nationality as each other. He also informed them that they were at liberty, should they wish to do so, to nominate a candidate or candidates who were of the same nationality as a permanent judge of the International Tribunal. He further advised them that, should they decide to nominate a candidate or candidates, then, in accordance with paragraph 1 (b) of article 13 ter of the Statute of the International Tribunal, they should take into account the importance of a fair representation of female and male candidates.

4. The 60 nominations which had been received by the Secretary-General within the period stipulated in paragraph 1 (b) of article 13 ter of the Statute of the International Tribunal, as amended by the Security Council in resolution 1329 (2000), were forwarded by the Secretary-General to the President of the Security Council, in accordance with paragraph 1 (c) of article 13 ter, as so amended, by means of a letter dated 19 April 2001 (S/2001/391). By means of letters dated 25 and 26 April 2001, the Legal Counsel also forwarded to the President of the Security Council, in case the Council should wish to consider them receivable, four additional nominations which had been received by the Secretary-General following the expiry of the period stipulated in paragraph 1 (b) of article 13 ter of the Statute of the International Tribunal, as amended. At its 4316th meeting, on 27 April 2001, the Security Council, in accordance with paragraph 1 (c) of article 13 ter of the Statute of the International Tribunal, established a list of 64 candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1350 (2001) of 27 April 2001 and was formally conveyed to the President of the General Assembly by means of a letter dated 27 April 2001 from the President of the Security Council (A/55/917).

5. The list of candidates for ad litem judges and the procedure for the election of the ad litem judges of the International Tribunal are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/55/919).

I. List of candidates for ad litem judges of the International Tribunal

6. The list of candidates for ad litem judges of the International Tribunal is as follows:

Mr. Aydin Sefa **Akay** (Turkey)

Ms. Carmen María **Argibay** (Argentina)

Ms. Lucy **Asuagbor** (Cameroon)

Mr. Jeremy **Badgery-Parker** (Australia)

Mr. Chifumu Kingdom **Banda** (Zambia)

Mr. Roberto **Bellelli** (Italy)

Mr. Pierre G. **Boutet** (Canada)

Mr. Hans Henrik **Brydensholt** (Denmark)

Mr. Guibril **Camara** (Senegal)

Mr. Joaquin Martin **Canivell** (Spain)

Mr. Romeo T. **Capulong** (Philippines)

Mr. Oscar **Ceville** (Panama)

Mr. Isaac Chibulu Tantameni **Chali** (Zambia)

Mr. Arthur **Chaskalson** (South Africa)

Ms. Maureen Harding **Clark** (Ireland)

Ms. Fatoumata **Diarra** (Mali)

Mr. Cenk Alp **Durak** (Turkey)

Mr. Moïse **Ebongue** (Cameroon)

Mr. Mathew **Epuli** (Cameroon)

Mr. Albin **Eser** (Germany)

Mr. Mohamed Al Habib Fassi **Fihri** (Morocco)

Mr. John Foster **Gallop** (Australia)

Mr. Joseph Nassif **Ghamroun** (Lebanon)

Mr. Michael **Grotz** (Germany)

Mr. Abdullah Mahamane **Haidara** (Mali)

Mr. Claude **Hanoteau** (France)

Mr. Hassan Bubacarr **Jallow** (Gambia)

Ms. Ivana **Janů** (Czech Republic)

Mr. Aykut **Killiç** (Turkey)

Ms. Flavia **Lattanzi** (Italy)

Mr. Per-Johan **Lindholm** (Finland)

Mr. Augustin P. **Lobejón** (Spain)

Mr. Diadié Issa **Maiga** (Mali)

Ms. Irene Chirwa **Mambilima** (Zambia)

Mr. Dick F. **Marty** (Switzerland)

Ms. Jane Hamilton **Mathews** (Australia)

Ms. Suzanne Mengue **Zomo** (Cameroon)

Mr. Ghulam Mujaddid **Mirza** (Pakistan)

Mr. Ahmad Aref **Moallem** (Lebanon)

Mr. Mphanza Patrick **Mvunga** (Zambia)

Mr. Rafael **Nieto-Navia** (Colombia)

Mr. Léopold **Ntahompagaze** (Burundi)

Mr. André **Ntahomvukiye** (Burundi)

Mr. Cesar Pereira **Burgos** (Panama)

Mr. Mauro **Politi** (Italy)

Ms. Vonimbolana **Rasoazanany** (Madagascar)

Mr. Ralph **Riachy** (Lebanon)

Mr. Ingo **Risch** (Germany)

Mr. Robert **Roth** (Switzerland)

Mr. Zacharie **Rwamaza** (Burundi)

Mr. Sourahata Babouccar **Semega-Janneh** (Gambia)

Mr. Tom Farquhar **Shepherdson** (Australia)

Mr. Amarjeet **Singh** (Singapore)

Ms. Ayla **Songor** (Turkey)

Mr. Albertus Henricus Joannes **Swart** (Netherlands)

Mr. György **Szénási** (Hungary)

Mr. Ahmad **Takkieddine** (Lebanon)

Mr. Chikako **Taya** (Japan)

Mr. Krister **Thelin** (Sweden)

Mr. Stefan **Trechsel** (Switzerland)

Ms. Christine Van Den **Wyngaert** (Belgium)

Mr. Volodymyr **Vassylenko** (Ukraine)

Mr. Lal Chand **Vohrah** (Malaysia)

Ms. Sharon A. **Williams** (Canada)

II. Procedure for the election of ad litem judges

7. The election of ad litem judges will take place in accordance with the following provisions:

(a) Article 13 and article 13 ter of the Statute of the International Tribunal, as amended by Security Council resolution 1329 (2000) of 30 November 2000;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal, it was decided at the time of the previous elections of judges in 1993, 1997, 1998 and 2001 to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of ad litem judges of the International Tribunal.

8. In accordance with article 13 ter, paragraph 1 (d), of the Statute of the International Tribunal, as amended by the Security Council in its resolution 1329 (2000) of 30 November 2000, the Holy See and Switzerland, being non-member States which maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

9. On the date of the election, the General Assembly will elect 27 ad litem judges from the list of candidates submitted to it by the Security Council.

10. According to article 13 of the Statute of the International Tribunal, as amended, ad litem judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to the same provision, due account shall be taken in the overall composition of the Chambers and sections of the Trial Chambers of the International Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law, and human rights law.

11. In accordance with paragraph 1 (d) of article 13 of the Statute of the International Tribunal, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 189 Member States, together with the two non-member States mentioned in paragraph 8 above. Accordingly, 96 votes constitutes an absolute majority in the Assembly for the purpose of the present election.

13. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 27 candidates.

14. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 27, a second ballot will be held, and balloting will continue in the same

meeting, if and as necessary, until 27 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 27 candidates less the number of candidates who have already obtained an absolute majority.

15. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

16. If, in the first ballot, more than 27 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 27 candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 27 candidates.

17. When 27 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.